

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

LARRY GENE HEGGEM,)	CASE NO. C07-1143-RAJ-MAT
)	
Plaintiff,)	
)	
v.)	ORDER DENYING PLAINTIFF'S
)	MOTION TO AMEND
WILLIAM STEFFENER, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff voluntarily dismissed claims against Deputy Prosecuting Attorney Helene Blume and Prosecuting Attorney Janice Ellis based on their immunity as of January 23, 2008 (Dkt. 28) and April 7, 2008 (Dkt. 41) respectively. He had previously alleged that Blume “maliciously used invalid reasons, [his] criminal record, to oppose” bail, interfering with his sixty-day speedy trial right, and that Ellis engaged “in a conspiratorial act of retaliation and malicious prosecution” in charging him with custodial assault. (Dkt. 26 at 3; emphasis omitted.)

Plaintiff now seeks to amend his complaint by re-opening his claims against Blume and Ellis. (Dkt. 54.) Plaintiff asserts that Blume and Ellis are not immune because they committed “‘retaliative conspiracy’ and ‘contempt of court,’ [and] violated state law & federal law[.]” (*Id.*

01 at 1.)¹ For the reasons described below, the Court finds no basis for allowing plaintiff to reinstate
02 his claims against Blume and Ellis.

03 Federal Rule of Civil Procedure 15 provides that “leave [to amend a pleading] shall be
04 freely given when justice so requires.” Fed. R. Civ. P. 15 (a). Leave to amend may be denied
05 where there is undue delay, bad faith or dilatory motive, undue prejudice to the opposing party,
06 or when the amendment would be futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). In this
07 case, plaintiff’s proposed amendment would be futile.

08 Claims for monetary damages against prosecutors are barred by absolute prosecutorial
09 immunity. *Imbler v. Pachtman*, 424 U.S. 409, 430-31(1976). This immunity applies to conduct
10 “intimately associated with the judicial phase of the criminal process,” protecting prosecutors
11 when performing traditional activities related to the initiation and presentation of criminal
12 prosecutions. *Id.* at 430-31; *accord Botello v. Gammick*, 413 F.3d 971, 976 (9th Cir. 2005) (“[I]t
13 is well established that a prosecutor has absolute immunity for the decision to prosecute a
14 particular case[.]”) As a result, allegations of, for example, malicious prosecution, conspiracy to
15 predetermine the outcome of a proceeding, or destruction of evidence are subject to dismissal on
16 grounds of prosecutorial immunity. *See, e.g., Milstein v. Cooley*, 257 F.3d 1004, 1008-09 (9th
17 Cir. 2001) (noting that prosecutorial immunity covers claims of the knowing use of false testimony
18 at trial, malicious prosecution, and suppression of exculpatory evidence); *Ashelman v. Pope*, 793

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20 ¹ Counsel for Blume and Ellis submitted an opposition to plaintiff’s request. (Dkt. 60.)
21 Plaintiff objects to the submission of this opposition given that Blume and Ellis are not currently
22 parties to this lawsuit. (*See* Dkt. 62.) However, whether or not the opposition should be deemed
properly submitted, the Court is able to resolve plaintiff’s motion without consideration of that
filing.

01 F.2d 1072, 1078 (9th Cir. 1986). (“[A] conspiracy between judge and prosecutor to predetermine
02 the outcome of a judicial proceeding, while clearly improper, nevertheless does not pierce the
03 immunity extended to judges and prosecutors.”); *Ybarra v. Reno Thunderbird Mobile Home*
04 *Village*, 723 F.2d 675, 677-80 (9th Cir. 1984) (prosecutorial immunity applies to destruction of
05 evidence). Accordingly, plaintiff’s proposed claims against Blume and Ellis, to the extent seeking
06 an award of monetary damages, would be barred by absolute prosecutorial immunity.

07 However, as noted by plaintiff, prosecutorial immunity does not protect prosecutors from
08 suits for injunctive and/or declaratory relief. *Gobel v. Maricopa County*, 867 F.2d 1201, 1203 n.6
09 (9th Cir. 1989) (citing *Supreme Court of Virginia v. Consumers Union of the United States, Inc.*,
10 446 U.S. 719, 736-37 (1980)). Plaintiff here seeks to reinstate claims which involved solely a
11 request for injunctive relief. (See Dkt. 26 at 4, 10.) Yet, as discussed below, the specific injunctive
12 relief sought is not appropriately considered by this Court.

13 Plaintiff requests relief in the form of “no further prosecution by defendants [Blume and
14 Ellis.]” (*Id.*) His proposed claims against Blume and Ellis, therefore, request relief associated with
15 his pending state court criminal proceedings. Generally, federal courts will not intervene in a
16 pending state court criminal proceeding absent extraordinary circumstances where the danger of
17 irreparable harm is both great and immediate. *Younger v. Harris*, 401 U.S. 37, 45 (1971).
18 “[O]nly in the most unusual circumstances is a defendant entitled to have federal interposition by
19 way of injunction or habeas corpus until after the jury comes in, judgment has been appealed from
20 and the case concluded in the state courts.” *Drury v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972)
21 (per curiam); accord *Carden v. Montana* 626 F.2d 82, 83-84 (9th Cir. 1980). Here, plaintiff
22 makes no showing of extraordinary circumstances that would justify this Court’s intervention in

01 plaintiff's ongoing state court criminal proceedings. As such, plaintiff's proposed amendment
02 would be futile.

03 For the reasons described above, plaintiff's motion to amend (Dkt. 54) is DENIED. The
04 Clerk is directed to send copies of this Order to the parties and to the Honorable Richard A. Jones.

05 DATED this 18th day of June, 2008.

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07 Mary Alice Theiler
08 United States Magistrate Judge
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